

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Fort Worth, Texas

**CHARLIE HILLARD, INC. d/b/a  
HILLARD AUTO PARK<sup>1</sup>**

Employer

**and**

Case No. 16-RC-10555

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

**I. THE PETITION, ISSUE PRESENTED, AND PARTIES' POSITIONS**

The Petitioner seeks to represent all full-time and regular part-time automobile service technicians (herein service technicians), lube technicians, pre-deliver inspectors (herein PDI technicians), used car technicians, helpers, and asset students at the Employer's Fort Worth facility and to exclude all office clerical employees, professional employees, managerial employees, parts employees, body shop employees, service writers, guards, and supervisors as defined in the Act. The Employer contends that the petitioned-for unit is inappropriate and that the following classifications should be included: service advisors, detail technicians, and parts employees (including parts drivers, parts stock employees, and

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<sup>1</sup> The Employer's name appears as amended at the hearing.

back counter employees). The issue at hand is whether the petitioned-for unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At hearing, both parties agreed that any unit found appropriate should exclude collision shop employees, front counter employees, and porters. Additionally, neither party asserts that group leaders are supervisors within the meaning of Section 2(11) of the Act. The Petitioner would proceed to an election in a unit larger than or different from the petitioned-for unit.

## **II. THE REGIONAL DIRECTOR'S FINDINGS**

I have considered the evidence adduced during the hearing and the arguments advanced by both parties. For the reasons set forth below, I find that the petitioned-for unit is an appropriate unit, and accordingly, I will direct an election in a unit consisting of approximately 35 employees.

To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will detail the disputed employee classifications. Finally, I will discuss the evidence regarding community of interest and the reasoning that supports my findings.

## **III. OVERVIEW OF EMPLOYER'S OPERATIONS**

The Employer operates an automobile dealership in Fort Worth, Texas and is engaged in the sale, service, and repair of new and used vehicles, and in the sale of automotive parts. The Employer's dealership is a new car franchise dealership for Ford, Mazda, and Buick. John Glenn is the general manager, Terry Wood and Milton Piehl are service managers, Gary Murphy is the parts manager, Pepe Perez is the detail manager, and Ken Eagleton is the body shop manager. The Employer employs approximately 23 service technicians, 6 lube technicians, 2 PDI technicians, 2 used car technicians, 1 helper, 1 asset student, 8 service advisors, 6 detail technicians, and 12 parts employees. These employees work in various facilities located throughout the Employer's Fort Worth location.

Service technicians, lube technicians, used car technicians, PDI technicians, and the helper are classified according to their skill level (i.e. A, B, C, or D). The Employer utilizes a “lateral support group” system in distributing work. In this system, employees are placed into small groups. Eight total groups exist: five Ford groups and three Mazda-Buick groups. Each group contains at least one service advisor, service technician, and lube technician. One of the technicians is considered the group leader. PDI technicians and used car technicians are part of their own internal group and the helper works where assigned.

#### **IV. DISPUTED EMPLOYEE CLASSIFICATIONS**

##### Service Advisors

Service advisors are responsible for initially meeting with customers and discussing their automotive service and/or repair needs. They investigate and document potential issues with a customer’s vehicle and then generate a repair order to send to the technicians in their group. During this process, the service advisors assign various skill codes based on their assessment of the complexity of the repair and of the skills possessed by the technicians in their group.

In addition to a salary and customer service index bonus, service advisors are paid based on flag hours and group flag hours. Flag hours refer to the number of hours that a specific manual or pricing guide determines a job will take to complete. Regardless of how long a particular job actually takes to complete, the service advisor will be compensated based on the number of hours for which that job is flagged. Service advisors earn between \$30,000 and \$50,000 annually. Service advisors also engage in “upselling,” whereby if the service advisor notices an additional maintenance problem (which may be brought to his attention by a service technician), he attempts to sell the customer the additional repair. Successful upselling increases the service advisors total flag hours.

Service advisors work Monday through Friday from 7 a.m. to 6 p.m., but two stay from 6 p.m. to 7 p.m. and rotate that duty. Additionally, a Ford service advisor works every fifth Saturday from 8 a.m. to 5 p.m. and a Mazda-Buick service advisor works the same hours every other Saturday. Service advisors wear uniforms and have their own offices. They are not required to receive the same training or certification as service technicians, nor must they own any tools.

#### Detail Technicians

Detail technicians are primarily responsible for the upkeep of a vehicle's exterior. Their duties include cleaning vehicles, putting pinstripes on vehicles, etching glass, repairing vinyl, and buffing paint.

Detail technicians are paid based strictly on flag hours and earn between \$18,000 and \$20,000 per year. Their department is open Monday through Friday, 7 a.m. to 8 p.m., and on Saturday. Detail technicians either work on the morning or evening shift. They wear uniforms and use tools that the Employer provides. Neither Ford nor any other type of certification is required in order to become a detail technician.

#### Parts Employees

Parts employees are responsible for providing technicians with the parts necessary to complete a task. Parts drivers transport parts to wholesale customers and bring parts back to the Employer's facility. Parts stock employees take parts delivered from a stock order and place them on the shelves. Back counter employees check to see if a requested part is in stock and, if it is not, take the appropriate steps to procure the part. After the part is procured, it is placed in the bin of the requesting group.

Parts stock employees earn approximately \$500 per month plus a bottom line gross off of commission. Back counter employees earn approximately \$1000 to \$1500 per month plus flag hours.

Parts drivers earn approximately \$500 per month plus a bottom line gross off of parts sales.

The parts department is open Monday through Friday, 7 a.m. to 7 p.m., and on Saturday. Parts employees work rotating, staggered shifts and wear uniforms. Parts employees use tools for limited purposes, such as to build lock cylinders, but the record does not reveal whether they or the Employer provide these tools. Neither Ford nor any other type of certification is required in order to become a parts employee.

## V. ANALYSIS

The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484 (2001). The burden of proving that the petitioned-for unit is inappropriate lies with the party challenging the unit's appropriateness. *Livingstone College*, 290 NLRB 304, 305 (1988). For a unit to be appropriate, the key question is whether the employees in that unit share a sufficiently strong community of interest. The Board first announced the community of interest concept in *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962). "In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *The Boeing Company*, 337 NLRB 152 (2001) (citations omitted).

Nothing in the Act requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the unit be "appropriate." *Bartlett Collins Co.*, 334 NLRB 484 (2001). Thus, a union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB

748, 751 (1965); *Purity Food Stores*, 160 NLRB 651 (1966). Accordingly, a craft department is generally an appropriate unit where, as here, there is no history of collective bargaining on a more comprehensive basis. See *E.I. Du Pont & Co.*, 162 NLRB 413 (1966).

I conclude that the petitioned-for unit is a craft unit. The employees in the petitioned-for unit are primarily engaged in mechanical diagnosis and repair work that is not performed by other employees. In order to perform this work, technicians undergo specialized training (at places such as the National Institute for Automotive Service Excellence) and use specialized tools. Indeed, on similar facts, the Board has held that automobile mechanics are a craft unit. See *Dodge City of Wauwatosa, Inc.*, 282 NLRB 459 (1986); *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990). In *Dodge City* and *Fletcher Jones*, the Board stated that “mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive...department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees.” *Dodge City of Wauwatosa, Inc.*, 282 NLRB at 460 fn. 6, citing *Fletcher Jones Chevrolet*.

On the instant facts, the record discloses that the petitioned-for unit has a separate craft identity and distinct community of interest from the other employees. As in *Dodge City* and *Fletcher Jones Chevrolet*, the service technicians supply their own tools at a considerable cost. Regarding job function, service technicians work on automotive repair, for which they need special training. Conversely, service advisors work with the public and assign repair jobs, detail technicians perform aesthetic work, and parts employees store, track, deliver, and pick up automotive parts. The Employer, moreover, requires no training or certification for service advisors, detail technicians, or parts employees. Additionally, in overstating functional integration, contact, and similarity in benefits, the Employer overlooks that the petitioned-for unit and disputed classifications do not engage in cross

training, work off of a different pay scale, wear different uniforms, and work in different areas. The only example of interchange that the record revealed was one technician, approximately two years ago, that became a service advisor before switching back to the technician position.

In its brief, the Employer argues that a craft unit cannot exist because a group of lesser skilled employees, the lube technicians, PDI technicians, helper, and asset student, has been petitioned for inclusion in the unit. (Lube technicians perform “quick service” on a vehicle, perform 21-point inspections, check the brakes, fluid levels, hoses, and belts, and let a service advisor know if a vehicle needs any additional service. PDI technicians are responsible for inspecting a new vehicle, testing the vehicle, checking fluid levels, and adding accessories. The helper possesses skills lower than a lube technician and is able to lube a car, change the oil, and possible help a technician remove a part. The asset student, considered by the Employer to be a “D” technician,” is currently working on his Ford training and upon completion will be eligible to be hired as a service technician.) Lesser skilled technicians, however, have been included in craft units as helpers or trainees. *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990) and *Dodge City of Wauwatosa, Inc.* 282 NLRB 459 (1986). In *Fletcher Jones*, the quick services technicians were not as skilled as the other service technicians, but performed similar mechanical work and received training and classes from the Employer in order to upgrade their skills. The Board relied upon these factors in deciding to include them in the unit. Similarly, in *Dodge City*, the Board included the lube and oil work employees in the craft unit. *Id.*, 282 NLRB 459 (1986).

The cases that the Employer cites in support of its contention that the disputed classifications should be included in any unit found appropriate do not mirror the facts at hand. For example, the Employer relies upon *R.H. Peters Chevrolet, Inc.*, 303 NLRB 791 (1991), to argue that the service

advisors share a strong community of interest with the service technicians and should be included in the unit. *R.H. Peters Chevrolet, Inc.*, is distinguishable from the instant facts because the service advisors in that case were required to take the same yearly examination as the mechanics. Here, the Employer requires no yearly examination of the service advisors. Further, the Employer points to the unit found appropriate in *Kevah Konner, Inc.*, 256 NLRB 67 (1981), which includes body shop and parts employees. In *Kevah Konner, Inc.*, unlike here, it was the Union's desire to represent these employees (along with other mechanics) in a single unit. Finally, in its brief, the Employer asserts that *Jack Madden Ford Sales, Inc.*, 1-RC-21354 (2001), is instructive to this case because it finds against imposing an artificial line of demarcation, based on extent of organization, down the center of the employer's technical service operations. However, not only does *Jack Madden Ford Sales, Inc.* involve a multi-facility unit, it is also noteworthy that the unit found appropriate in that case excluded service advisors, detailers, and parts employees.

## **VI. SUMMARY**

In view of the pertinent Board law and the evidence reflected in the record, I find that although there are some similarities in functional integration, contact, and benefits between the employees in the petitioned-for unit and those employees the Employer urges must be included, these similarities are not so great as to compel their inclusion in the petitioned-for unit. As described above, my decision is based on the fact that the petitioned-for unit is a distinct and homogeneous group of trained and skilled craftsmen who share a strong community of interest. In sum, the Employer has not met its burden of establishing that the petitioned-for unit is inappropriate, and accordingly, I find that the petitioned-for unit is an appropriate unit under the Act.



## **VII. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, a Texas corporation, is engaged in the sale, service, and repair of new and used cars and trucks and in the sale of parts, with a place of business in Fort Worth, Texas. During the past twelve months, the Employer received gross revenue in excess of \$500,000 and during the same period has sold goods valued in excess of \$50,000 to customers located within the State of Texas. During the same period, each of said customers purchased and received goods in excess of \$50,000 directly from suppliers outside the State of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. I take administrative notice that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time service technicians, lube technicians, PDI technicians, used car technicians, helpers, and asset students employed by the Employer in Fort Worth, Texas.

**EXCLUDED:** All office clerical employees, professional employees, managerial employees, service advisors, detail technicians, parts employees (including parts drivers, parts stock employees, and back counter employees), collision shop employees, front counter employees, porters, guards, and supervisors as defined in the Act.

## **VIII. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Association of Machinists and Aerospace Workers, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102, on or before February 17, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the

election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **IX. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST, on February 23, 2004. The request may not be filed by facsimile.

**Dated** February 9, 2004, at Fort Worth, Texas.

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/s/ *Curtis A. Wells*

Curtis A. Wells, Regional Director  
NLRB Region 16

**Classification Index**

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